

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3
4 UNITED STATES OF AMERICA,) CASE NO. 17-CR-087 (FAB)
5 Plaintiff,)
6)
7 vs.) CHANGE OF PLEA HEARING
8)
9 FRANCISCO SEVERINO-PACHECO,)
10 Defendant.)
11)

12
13 TRANSCRIPT OF CHANGE OF PLEA HEARING
14 HELD BEFORE THE HONORABLE JUDGE FRANCISCO A. BESOSA
15 SAN JUAN, PUERTO RICO
16 Tuesday, April 4, 2017

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19 APPEARANCES:

20 For the United States:

21 JONATHAN L. GOTTFRIED, AUSA
22 United States Attorney's Office
23 Torre Chardón, Suite 1201
24 350 Carlos Chardón Street
25 San Juan, PR 00918

26 For the Defendant:

27 ISABELLE C. ORIA-CALAF, AFPD.
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35 Produced by mechanical stenography; computer-aided
transcription

Joe Reynosa, CSR, RPR
Official Court Reporter

(PROCEEDINGS COMMENCED AT 9:25 A.M.)

THE CLERK: Criminal Case No. 17-087, United States of America versus Francisco Severino-Pacheco for Change of Plea Hearing.

On behalf of the Government, Assistant United States Attorney Jonathan L. Gottfried.

On behalf of the Defendant, Assistant Federal Public Defender Isabelle C. Oria-Calaf.

Defendant is present and assisted by the certified court interpreter.

MR. GOTTFRIED: Good morning, Your Honor.

THE COURT: Good morning.

MS. ORIA-CALAF: Good morning, Your Honor.

THE COURT: Good morning, Ms. Oria.

Would you please put Mr. Severino under oath.

THE CLERK: Yes, Your Honor.

FRANCISCO SEVERINO-PACHECO,

after having been first duly sworn or affirmed upon oath, was examined and testified as follows:

THE COURT: Ms. Oria, this is a straight plea; correct?

Joe Reynosa, CSR, RPR
Official Court Reporter

1 MS. ORIA-CALAF: It is, Your Honor.

2 THE COURT: Mr. Severino, before I accept your
3 petition to enter a plea of guilty, I have to determine that
4 you are competent to make your plea and that your petition is
5 completely voluntary.

6 Do you understand that?

7 DEFENDANT SEVERINO-PACHECO: Yes.

8 THE COURT: Mr. Severino, do you understand that
9 you are now under oath?

10 DEFENDANT SEVERINO-PACHECO: Yes.

11 THE COURT: If you answer any of my questions
12 falsely, your answers may later be used against you in a
13 prosecution for perjury or for making a false statement.

14 Do you understand that?

15 DEFENDANT SEVERINO-PACHECO: Yes.

16 THE COURT: Mr. Severino, would you please state
17 your full name.

18 DEFENDANT SEVERINO-PACHECO: Francisco
19 Severino-Pacheco.

20 THE COURT: And how old are you, sir?

21 DEFENDANT SEVERINO-PACHECO: Twenty-nine.

22 THE COURT: And how far did you go in school?

23 DEFENDANT SEVERINO-PACHECO: Completed the twelfth
24 grade.

25 THE COURT: So you graduated from high school?

1 DEFENDANT SEVERINO-PACHECO: Yes.

2 THE COURT: Have you been treated recently for any
3 type of mental illness?

4 DEFENDANT SEVERINO-PACHECO: No.

5 THE COURT: Have you been treed recently for
6 addiction to any type of narcotic drug?

7 DEFENDANT SEVERINO-PACHECO: No.

8 THE COURT: Are you currently under the influence
9 of any type of narcotic drug?

10 DEFENDANT SEVERINO-PACHECO: No.

11 THE COURT: Are you currently taking any type of
12 medication?

13 DEFENDANT SEVERINO-PACHECO: No.

14 THE COURT: Are you currently under the influence
15 or have you drunk any alcoholic beverage within the last
16 24 hours?

17 DEFENDANT SEVERINO-PACHECO: No.

18 THE COURT: Mr. Severino, what is it that you want
19 to do this morning here in court?

20 DEFENDANT SEVERINO-PACHECO: Plead guilty.

21 THE COURT: Ms. Oria, do you have any doubts as to
22 Mr. Severino's competence to plead?

23 MS. ORIA-CALAF: No, Your Honor.

24 THE COURT: Mr. Gottfried, do you have any doubts?

25 MR. GOTTFRIED: No, Your Honor.

1 THE COURT: Based on his answers to my questions
2 and his appropriate demeanor, I find Defendant Francisco
3 Severino-Pacheco to be competent to enter his plea of guilty.

4 Mr. Severino, did you receive a copy of the
5 indictment that's pending against you?

6 DEFENDANT SEVERINO-PACHECO: Yes.

7 THE COURT: Did you discuss the charge in the
8 indictment with your attorney, with Ms. Oria?

9 DEFENDANT SEVERINO-PACHECO: Yes.

10 THE COURT: Did you discuss your decision to plead
11 guilty with Ms. Oria?

12 DEFENDANT SEVERINO-PACHECO: Yes.

13 THE COURT: Are you fully satisfied with the
14 counsel, representation, and advice given to you by Ms. Oria?

15 DEFENDANT SEVERINO-PACHECO: Yes.

16 THE COURT: Mr. Severino, when you were arrested
17 and you were first brought to this court, you appeared before
18 another judge, and at that time you pled not guilty to the
19 charges.

20 Do you remember that?

21 DEFENDANT SEVERINO-PACHECO: Yes.

22 THE COURT: Do you understand that you have a right
23 to maintain that plea of not guilty if you wanted to?

24 DEFENDANT SEVERINO-PACHECO: Yes.

25 THE COURT: Do you understand that if you were to

1 maintain a plea of not guilty, you would then have the right
2 to a trial by jury?

3 DEFENDANT SEVERINO-PACHECO: Yes.

4 THE COURT: Do you understand that at the trial you
5 would be presumed to be innocent?

6 DEFENDANT SEVERINO-PACHECO: Yes.

7 THE COURT: Do you understand that it's the
8 Government that has to prove that you are guilty with
9 competent evidence and beyond a reasonable doubt?

10 DEFENDANT SEVERINO-PACHECO: Yes.

11 THE COURT: Do you understand that at the trial
12 your attorney would be with you at all times to help you with
13 your defense?

14 DEFENDANT SEVERINO-PACHECO: Yes.

15 THE COURT: And that you also would have the right
16 to see every witness that would come to the trial to testify
17 and listen to every witness' testimony.

18 Do you understand that?

19 DEFENDANT SEVERINO-PACHECO: Yes.

20 THE COURT: And that you also would have the right
21 to have those witnesses cross-examined as part of your
22 defense.

23 Do you understand that?

24 DEFENDANT SEVERINO-PACHECO: Yes.

25 THE COURT: And that you also would have the right

1 not to testify at the trial, or even present any evidence,
2 unless you voluntarily would want to do so as part of your
3 defense.

4 Do you understand that?

5 DEFENDANT SEVERINO-PACHECO: Yes.

6 THE COURT: And that you also would have the right
7 to have witnesses come to the trial to testify on your behalf
8 as part of your defense, if necessary, by Court order.

9 Do you understand that?

10 DEFENDANT SEVERINO-PACHECO: Yes.

11 THE COURT: Do you understand that if you were to
12 decide not to testify at the trial, or even present any
13 evidence, that cannot be used against you?

14 DEFENDANT SEVERINO-PACHECO: Yes.

15 THE COURT: Do you understand that by entering a
16 plea of guilty, if I accept your plea, there will not be a
17 trial?

18 DEFENDANT SEVERINO-PACHECO: Yes.

19 THE COURT: Do you understand that you will have
20 waived or given up your right to a trial and those other
21 rights that are associated with the trial that I just
22 mentioned to you?

23 DEFENDANT SEVERINO-PACHECO: Yes.

24 THE COURT: Do you understand that by entering a
25 plea of guilty, you also waive or give up your right not to

1 incriminate yourself?

2 DEFENDANT SEVERINO-PACHECO: Yes.

3 THE COURT: And the reason for that waiver is that
4 I have to ask you questions about what you did in order for
5 me to be satisfied that you are guilty.

6 Do you understand that?

7 DEFENDANT SEVERINO-PACHECO: Yes.

8 THE COURT: Do you understand that you will have to
9 acknowledge your guilt?

10 DEFENDANT SEVERINO-PACHECO: Yes.

11 THE COURT: Do you understand that the offense to
12 which you want to plead guilty, Count One of the indictment,
13 illegal possession of a machine gun, is a felony offense?

14 DEFENDANT SEVERINO-PACHECO: Yes.

15 THE COURT: Do you understand that if I accept your
16 plea, you will be adjudged guilty of that felony offense?

17 DEFENDANT SEVERINO-PACHECO: Yes.

18 THE COURT: Do you understand that that
19 adjudication of guilt may deprive you of some rights?

20 For example, you won't able to hold public office;
21 you won't be able to serve on a jury; you won't be able to
22 possess any kind of firearm; and if you move somewhere in the
23 United States that is not Puerto Rico, you may even lose your
24 right to vote.

25 Do you understand that?

1 DEFENDANT SEVERINO-PACHECO: Yes.

2 THE COURT: Mr. Severino, you are charged in the
3 only count of the indictment of illegal possession of a
4 machine gun in that, on or about February 10, 2017, here in
5 Puerto Rico, you knowingly and possessed a machine gun, which
6 was a Glock firearm, .357 caliber, Model 31, serial number
7 DRF351US, that had been modified to shoot automatically more
8 that one shot without manual reloading by a single function
9 of the trigger.

10 Mr. Severino, is that what you did?

11 DEFENDANT SEVERINO-PACHECO: Yes.

12 THE COURT: Is that what you are pleading guilty
13 to?

14 DEFENDANT SEVERINO-PACHECO: Yes.

15 THE COURT: Mr. Gottfried, would you please inform
16 the Court and the Defendant what the maximum and minimum
17 punishment that the law provides for the offense to which he
18 wants to plead guilty.

19 MR. GOTTFRIED: The maximum statutory penalty is a
20 term of imprisonment of ten years -- there is no statutory
21 minimum term of imprisonment -- a fine not to exceed
22 \$250,000, a supervised release term of not more than three
23 years. In addition, there is a special monetary assessment
24 of \$100.

25 THE COURT: Ms. Oria, do you agree with that?

1 MS. ORIA-CALAF: Yes, Your Honor.

2 THE COURT: Have you discussed and explained the
3 terms of supervised release to Mr. Severino?

4 MS. ORIA-CALAF: Yes, Your Honor.

5 THE COURT: Mr. Severino, on the date that you are
6 sentenced, I will also impose upon you a term of supervised
7 release. In your case, it cannot be more than three years.

8 During that term, you will be under the supervision
9 of a probation officer, and that term will commence when you
10 are released from prison.

11 If you violate any of the conditions that I impose
12 upon you, the probation officer is going to tell me, and at
13 that time we will have a hearing here in court. And
14 depending on what happens at the hearing, I can revoke your
15 supervised release term and send you back to prison.

16 Do you understand that?

17 DEFENDANT SEVERINO-PACHECO: Yes.

18 THE COURT: Do you understand all those serious
19 possible consequences of your plea of guilty?

20 DEFENDANT SEVERINO-PACHECO: Yes.

21 THE COURT: Do you understand that sentencing
22 within the sentencing guidelines is a matter for the Court to
23 decide?

24 DEFENDANT SEVERINO-PACHECO: Yes.

25 THE COURT: Have you and Ms. Oria talked about how

1 the sentencing guidelines might apply to your case?

2 DEFENDANT SEVERINO-PACHECO: Yes.

3 THE COURT: Do you understand that I won't be able
4 to determine what the guideline sentence for your case will
5 be until after I receive a completed pre-sentence
6 investigation report prepared by the probation officer?

7 DEFENDANT SEVERINO-PACHECO: Yes.

8 THE COURT: Do you understand that the sentence
9 that I may impose upon you may be different from whatever
10 recommendation is given by the probation officer, or whatever
11 recommendation is given by Ms. Oria, or whatever
12 recommendation is given by the Government?

13 Do you understand that?

14 DEFENDANT SEVERINO-PACHECO: Yes.

15 THE COURT: Do you understand that your sentence
16 may be affected by your criminal history?

17 DEFENDANT SEVERINO-PACHECO: Yes.

18 THE COURT: Do you understand that even after your
19 sentencing guideline range has been determined, I can in some
20 circumstances depart from those guidelines and impose a
21 sentence on you that is either more severe or less severe
22 than the sentence called for by the guidelines?

23 Do you understand that?

24 DEFENDANT SEVERINO-PACHECO: Yes.

25 THE COURT: Do you understand that there is no

1 parole in the Federal system?

2 DEFENDANT SEVERINO-PACHECO: Yes.

3 THE COURT: If you are sentenced to prison, you
4 will not be released on parole.

5 Do you understand that?

6 DEFENDANT SEVERINO-PACHECO: Yes.

7 THE COURT: Do you understand that I can reject
8 whatever sentencing recommendation is made by your attorney
9 or by the Government without permitting you to withdraw your
10 plea of guilty?

11 DEFENDANT SEVERINO-PACHECO: Yes.

12 THE COURT: Mr. Severino, are you pleading guilty
13 because someone forced you to change your plea?

14 DEFENDANT SEVERINO-PACHECO: No.

15 THE COURT: Is your plea a completely voluntary one
16 made on your own behalf?

17 DEFENDANT SEVERINO-PACHECO: Yes.

18 THE COURT: Mr. Gottfried, has the Government
19 provided full and complete discovery to Ms. Oria?

20 MR. GOTTFRIED: Yes, Your Honor.

21 THE COURT: Would you please give a brief
22 explanation of the theory to be presented to prove
23 Mr. Severino guilty if a trial were to be held.

24 MR. GOTTFRIED: On February 10th, 2017, the Puerto
25 Rico Police Department received a called from a citizen to

1 report that she heard a speeding vehicle and the sound of
2 gunshots from a machine gun close to the fire department
3 located near Cecilia Street in San Juan.

4 PRPD agents in the parking lot of the Hato Rey East
5 Precinct also heard the detonation.

6 PRPD agents pursued the vehicle without losing
7 sight of it. And after a vehicle chase, PRPD agents stopped
8 the vehicle.

9 The passenger in the vehicle was the Defendant,
10 Francisco Severino-Pacheco.

11 PRPD agents conducted a safety frisk of the
12 Defendant and discovered a fully automatic Glock .357 caliber
13 firearm, Model 31, bearing serial number DRF351US, hidden in
14 Defendant's groin area with an empty high capacity Glock
15 magazine in the firearm.

16 PRPD agents secured the firearm, and the Defendant
17 was placed under arrest.

18 Later, the Defendant waived his Miranda rights and
19 told agents from the Department of Homeland Security that he
20 had purchased the gun for approximately \$1,600 around five
21 years ago knowing that the gun was fully automatic.

22 He further stated that the firearm had been made
23 fully automatic through welding as opposed to through the use
24 of a chip.

25 At trial, the United States would have proven

beyond a reasonable doubt that Defendant is guilty as charged in Count One of the indictment. This would have been proven through physical and documentary evidence, including but not limited to live testimony of PRPD agents, Defendant's confession, recordings of the gunshots, evidence recovered at the scene, including the firearm and shell casings, expert witnesses, and other physical evidence.

THE COURT: Mr. Severino, do you agree with the Government's version that you just heard?

DEFENDANT SEVERINO-PACHECO: Yes.

THE COURT: Is that what you did?

DEFENDANT SEVERINO-PACHECO: Yes.

THE COURT: Do you still want to plead guilty?

DEFENDANT SEVERINO-PACHECO: Yes.

THE COURT: Mr. Severino, how do you plead to the charges before the Court? Guilty or not guilty?

DEFENDANT SEVERINO-PACHECO: Guilty.

THE COURT: It's the finding of the Court in the case of the United States versus Francisco Severino-Pacheco that Mr. Severino is fully competent and capable of entering an informed plea, that he is aware of the nature of the charge and the consequences of his plea, and that his plea of guilty is a knowing and voluntary one, supported by an independent basis in fact containing each of the essential elements of the offense.

1 Mr. Severino's plea is, therefore, accepted, and he
2 is now adjudged guilty of that offense.

3 The Court orders a pre-sentence investigation
4 report to be prepared by the probation officer to assist the
5 Court in sentencing.

6 Mr. Severino, it's very important that you
7 cooperate with the probation officer when he or she is
8 preparing this report. Ms. Oria may accompany you during and
9 help you with your participation with the probation officer
10 who is assigned to your case.

11 Do you understand that?

12 DEFENDANT SEVERINO-PACHECO: Yes.

13 THE COURT: May I have a sentencing date, please.

14 THE CLERK: July 12, 2017, at 9:00 a.m.

15 THE COURT: Sentencing on July 12, 2017, at
16 9 o'clock in the morning.

17 Is there anything else?

18 MS. ORIA-CALAF: No, Your Honor.

19 THE COURT: Mr. Gottfried?

20 MR. GOTTFRIED: Nothing from the Government.

21 MS. ORIA-CALAF: Permission to withdraw.

22 THE COURT: You are excused.

23
24 (PROCEEDINGS ADJOURNED AT 9:40 A.M.)
25

REPORTER'S CERTIFICATE

I, JOE REYNOSA, Official Court Reporter for the United States District Court for the District of Puerto Rico, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct computer-aided transcript of proceedings had in the within-entitled and numbered cause on the date herein set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

S/Joe Reynosa

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